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No. 715

In the Supreme Court of the United States

OCTOBER TERM, 1960

RAYMOND W. CLAWSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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Green v. *United States*, 356 U.S. 165 — 5, 6

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OCTOBER TERM, 1960

No. 715

RAYMOND W. CLAWSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the court of appeals (Pet. 37) is reported at 284 F. 2d 360.

JURISDICTION

The judgment of the court of appeals was entered on December 6, 1960 (Pet. 37), and a petition for rehearing was denied on January 12, 1961 (Pet. 3). The petition for a writ of certiorari was filed on February 10, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, on the evidence before it, the district court correctly found petitioner guilty of criminal

contempt in willfully disobeying its 1951 order of commitment issued upon petitioner's conviction of willfully failing to file an income tax return for the year 1946.

STATUTE INVOLVED

18 U.S.C. 401:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> * * * * *
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

STATEMENT

Petitioner was adjudged guilty of criminal contempt, in violation of 18 U.S.C. 401, for willful disobedience of the order of commitment issued by the United States District Court for the Southern District of California upon his conviction in 1951 of having willfully failed to file a 1946 federal income tax return, in violation of Section 145(a) of the Internal Revenue Code of 1939. After finding petitioner guilty of criminal contempt, Judge Yankwich imposed a prison sentence of eighteen months. (R. 173, 193.) [1] The court of appeals affirmed. (Pet. App.)

The evidence may be summarized briefly as follows:

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[1] "R." refers to Volume II of the record in this Court, consisting of a typewritten transcript of the proceedings in the district court upon petitioner's trial for contempt.

On May 21, 1951, petitioner—having been found guilty of willfully failing to file his 1946 income tax return—was sentenced to a year in prison. The formal judgment and commitment provided that service of the sentence was to begin at 4 p.m. the same day, but petitioner was admitted to bail pending appeal. (R. 165–166.) The court of appeals affirmed the conviction on August 28, 1952, and denied a petition for rehearing on November 5, 1952 (*Clawson* v. *United States*, 198 F. 2d 792). This Court denied certiorari on February 2, 1953 (344 U.S. 929), and denied a petition for rehearing on March 9, 1953 (345 U.S. 914). On or about March 19, 1953, the attorneys on both sides were advised by the clerk of the district court that the mandate would be spread on April 8, 1953, and that petitioner should surrender to the United States Marshal for the commencement of his sentence. (Pet. 9.)

Petitioner did not appear on April 8, 1953, but his attorney did, and advised the court that petitioner was in San Diego. (R. 37–38.) The mandate was spread and the court granted a stay of execution until April 20, 1953, to enable petitioner's attorney to move for a reduction of sentence, which motion was filed on April 15, 1953. (Pet. 9; R. 38–39.) On April 19, 1953, a physician treated petitioner in Palm Springs, California, for alleged high blood pressure; on that occasion petitioner requested that his physician advise his attorney that "he would not be able to keep the appointment that he had" (R. 58) with his attorney (R. 53, 57, 59).

On the same day (or possibly the next day—when the motion for reduction of sentence was heard) petitioner fled to Mexico (R. 112–114, 133) and did not return to the United States until August 20, 1959, six years and four months later (R. 73–74).

On April 24, 1953—on his fourth or fifth day in Mexico—petitioner wrote a letter to the district judge requesting a stay until May 15, 1953 (R. 102), and on the same day he wrote a letter to his attorney advising him of the letter to the judge and requesting (Govt. Ex. 2): "Please make a motion for modification if the mandate has come down."[2] On April 27, 1953, the date to which the hearing on the motion to reduce sentence had been continued, the court was advised of petitioner's departure to Mexico, whereupon the appeal bond was forfeited and a bench warrant was issued. (R. 83, 89.)

In May 1953, the sureties on petitioner's bond received a letter from petitioner (R. 61–63) in which he stated, *inter alia* (Govt. Ex. 3):

> I intend to surrender in court on May 15 or 18. This will exonerate the bail. I am not at all well and it may be that I will not be physically able to go in on those days. In any case you will be provided with a cashier's check for $5,000 if there should be any difficulty. * * *

On August 20, 1959, petitioner was deported to the United States by the Mexican Immigration authorities. Petitioner was put aboard a non-stop plane to

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[2] Petitioner had attended law school for about six years. (R. 123–124.)

Los Angeles, and was arrested by FBI agents as he deboarded. (R. 73–74, 136, 141.) On the way to jail petitioner admitted to the agents that while he was in Mexico he had received a notice advising him to surrender to a United States Marshal, but that he had not done this and had decided to remain in Mexico. (R. 74.)

At the hearing on the order to show cause why he should not be adjudged in criminal contempt of the court (R. 4, 11), petitioner admitted that he had read in a newspaper in May 1953, that there was a bench warrant outstanding for his arrest (R. 95) and that his bail bond had been "confiscated" (R. 96); that he knew then that if he came back to the United States he would have to commence serving his sentence (R. 105–106); that the reason he did not return to this country earlier was that he did not want to go to jail (R. 135); and that when he did return he had not notified any federal authorities that he was returning to serve his sentence (R. 106, 118).

ARGUMENT

Petitioner's three contentions—all of which are disposed of by *Green* v. *United States*, 356 U.S. 165—are (1) that the evidence was insufficient to support the finding of contempt; (2) that petitioner was entitled to a trial by jury; and (3) that the punishment was excessive.

1. The contention that the evidence was inadequate rests wholly upon the argument (Pet. 25–31) that the proof failed to show (a) the existence of a court order requiring petitioner to appear at a specific

time and place to begin serving his sentence; and (b) that petitioner, at the time he fled to Mexico, had actual knowledge of such an order. Petitioner places sole reliance upon one of the dissenting opinions in *Green* v. *United States*, *supra*, and concedes (Pet. 28) that "no better argument can be advanced for our position here." In *Green* the order shown to have been disobeyed was an order on mandate requiring petitioners to surrender to the United States Marshal to begin serving their sentences on federal criminal convictions. Although the surrender order was not signed by the judge until after the defendants had fled, this Court upheld the contempt convictions, holding that disobedience of the order was punishable under 18 U.S.C. 401(3). The only relevant difference in the factual situations between *Green* and the instant case is that here the order held to have been disobeyed was the order of commitment filed at the time petitioner was sentenced in the tax case in 1951, which—though stayed during the appellate proceedings—called upon him to surrender to the Marshal as soon as the mandate came down and the final stay of execution expired. (R. 84–89.) Thus the *Green* case is precisely in point here.[3]

2. The contention that petitioner was entitled to a grand jury indictment and a trial by jury (Pet. 31–

[3] Petitioner errs in suggesting (Pet. 25) that the conviction was based upon disobedience of the terms of the bail bond. The significance of Judge Yankwich's discussion of that subject (R. 131–133) is simply that petitioner must have known that he was required to get the court's permission before leaving the jurisdiction, because he did apply for and get permission earlier—in December 1951—to go to New Mexico for a comparatively short visit. (See R. 125, 129.)

34) also relies mainly upon one of the dissenting opinions in the *Green* case, and is fully disposed of by the majority and concurring opinions in that case. (356 U.S. at 168–173, 189–193.)

3. The contention (Pet. 35–36) that the eighteen-month jail sentence was excessive similarly is answered by this Court's opinion in the *Green* case, wherein three-year sentences were upheld in circumstances very similar to those in the case at bar.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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